BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 3388

PATRICK K. YUEN 33649 Bardolph Circle Fremont, CA 94555

Original Pharmacist License No. RPH 33210

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on January 28, 2010.

It is so ORDERED on December 29, 2009.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Benneth H. Scheel

By

KENNETH H. SCHELL

Board President

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1	EDMUND G. BROWN JR.		
2	Attorney General of California WILBERT E. BENNETT		
3	Supervising Deputy Attorney General KIM M. SETTLES		
4	Deputy Attorney General State Bar No. 116945		
ļ	1515 Clay Street, 20th Floor		
5	P.O. Box 70550 Oakland, CA 94612-0550		
6	Telephone: (510) 622-2138 Facsimile: (510) 622-2270	•	
7.	E-mail: kim.settles@doj.ca.gov Attorneys for Complainant		
8	11110 meys for Complainani		
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10	BEFORE THE BOARD OF PHARMACY		
11	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
-	STATE OF	CALIFORNIA	
12			
13	In the Matter of the Accusation Against:	Case No. 3388	
14	PATRICK K. YUEN 33649 Bardolph Circle	OAH No. 2009080988	
15	Fremont, CA 94555	STIPULATED SURRENDER OF	
16	Pharmacist License No. RPH 33210	LICENSE AND ORDER	
17	Respondent.		
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19	TT IS LIEDEDY STIDLII ATED AND ACI		
	IT IS HEREBY STIPULATED AND AGE	RED by and between the parties in this	
20	proceeding that the following matters are true:		
21	PAR	TIES	
22	1. Virginia K. Herold (Complainant) is	the Executive Officer of the Board of Pharmacy.	
23	She brought this action solely in her official capacity and is represented in this matter by Edmund		
24	G. Brown Jr., Attorney General of the State of C	alifornia, by Kim M. Settles, Deputy Attorney	
25	General.		
26	2. Patrick K. Yuen (Respondent) is representing himself in this proceeding and has		
27	chosen not to exercise his right to be represented by counsel.		
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3. On or about August 16, 1979, the Board of Pharmacy issued Pharmacist License No. RPH 33210 to Patrick K. Yuen (Respondent). The license was in full force and effect at all times relevant to the charges brought in Accusation No. 3388 and will expire on December 31, 2010, unless renewed.

JURISDICTION

Accusation No. 3388 was filed before the Board of Pharmacy, Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 17, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3388 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

- Respondent has carefully read, and understands the charges and allegations in Accusation No. 3388. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 3388, agrees that cause exists for discipline and hereby surrenders his Pharmacist License No. RPH 33210 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacist License without further process.

CONTINGENCY

- 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that the surrender of Pharmacist License No. RPH 33210, issued to Respondent Patrick K. Yuen is accepted by the Board of Pharmacy.

14. The surrender of Respondent's Pharmacist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent.

This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

- 15. Respondent shall lose all rights and privileges as a pharmacist in California as of the effective date of the Board's Decision and Order.
- 16. Respondent shall cause to be delivered to the Board both his wall license certificate and, if one was issued, pocket license on or before the effective date of the Decision and Order.
- 17. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 3388 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.
- 18. Should Respondent ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 3388 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.
- 19. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$2,515.00, prior to issuance of a new or reinstated license.
- 20. Respondent shall not apply for relicensure or petition for reinstatement for three (3) years from the effective date of the Board of Pharmacy's Decision and Order.

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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Ord	ler. I understand the
stipulation and the effect it will have on my Pharmacist License. I ente	r into this Stipulated
Surrender of License and Order voluntarily, knowingly, and intelligent	ly, and agree to be bound
by the Decision and Order of the Board of Pharmacy.	,
DATED: 10/23/2009 Varrey	Nuon

PATRICK K. YUEN
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 10/23/09

Respectfully submitted,

Lum M. Settles

EDMUND G. Brown Jr.

Attorney General of California

WILBERT E. BENNETT
Supervising Deputy Attorney General
KIM M. SETTLES
Deputy Attorney General

Deputy Attorney General Attorneys for Complainant

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Exhibit A

Accusation No. 3388

. 1	EDMUND G. BROWN JR.		
2	Attorney General of California WILBERT E. BENNETT		
	Supervising Deputy Attorney General		
3	Kim M. Settles Deputy Attorney General		
4	State Bar No. 116945		
5	1515 Clay Street, 20th Floor P.O. Box 70550		
6	Oakland, CA 94612-0550 Telephone: (510) 622-2138		
	Facsimile: (510) 622-2270		
7	E-mail; kim.settles@doj.ca.gov Attorneys for Complainant		
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1.0	BEFORE THE		
11	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
12	STATE OF CALIFORNIA		
13,			
	7 J 76 J 2200		
14	In the Matter of the Accusation Against: Case No. 3388		
15	PATRICK K. YUEN 33649 Bardolph Circle		
16	Fremont, CA 94555 A C C U S A T I O N		
17	Pharmacist License No. RPH 33210		
18	Respondent.		
19			
20	Complainant alleges:		
21	<u>PARTIES</u>		
22	1, Virginia K. Herold (Complainant) brings this Accusation solely in her official		
23	capacity as the Executive Officer of the Board of Pharmacy.		
24	2. On or about August 16, 1979, the Board issued Pharmacist License Number		
25	RPH 33210 to Patrick K. Yuen (Respondent). The Pharmacist License was in full force and		
26	effect at all times relevant to the charges brought herein and will expire on December 31, 2010,		
27	unless renewed.		
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STATUTES

- 3. This Accusation is brought before the California State Board of Pharmacy, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 4300 provides that every license issued by the Board may be suspended or revoked.
 - 5. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

- "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- "(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.
- "(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.
- "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.
- 6. Section 4327 of the Code provides, in pertinent part, that any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug shall be guilty of a misdemeanor.

7. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3 502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

- 8. Health and Safety Code section 11173 provides, in pertinent part that, no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances by fraud, deceit, misrepresentation, or subterfuge or by concealment of a material fact.
- 9. Health and Safety Code section 11170 provides that no person shall prescribe, administer or furnish a controlled substance for himself.
- 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

11. <u>Hycodan Syrup</u> is a trade name for Hydrocodone/Homatropine Syrup and is a Schedule III controlled substance and narcotic pursuant to Health and Safety Code section 11056(e)(4) and a dangerous drug as defined by Business and Professions Code section 4022.

- 12. Respondent is subject to disciplinary action in that from on or about May, 2007 to December 2, 2008, all the exact dates of which are unknown, while employed as a pharmacist at Kaiser Permanente Hospital, in Hayward, California, respondent, by his own admission repeatedly diverted and/or stole an unknown amount of Hycodan Syrup from the pharmacy, for his own use, and on numerous occasions administered Hycodan syrup to himself while on duty as a pharmacist.
- 13. Respondent's conduct as set forth in paragraph 12, above, constitutes the commission of acts involving moral turpitude, dishonesty, fraud, and deceit and is cause for disciplinary action pursuant to section 4301(f).
- 14. Respondent's conduct as set forth in paragraph 12, above, constitutes administering a controlled substance to himself and is cause for disciplinary action pursuant to section 4301(h).
- 15. Respondent's conduct as set forth in paragraph 12, above, reflects self-administering and being under the influence of a controlled substance while on duty as a pharmacist, in violation of section 4327, and is cause for disciplinary action pursuant to section 4301(o).
- 16. Respondent's conduct as set forth in paragraph 12, above, constitutes a violation of the statutes regulating controlled substances and dangerous drugs, to wit: Business and Professions Code section 4060 and Health and Safety Code sections 11170 and 11173, and is cause for disciplinary action pursuant to Business and Professions Code sections 4301(j) and (o).

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing issue a decision:

1. Revoking or suspending Pharmacist License Number RPH 33210, issued to Patrick K. Yuen.

1	2. Ordering Patrick K. Yuen to pay the Board the reasonable costs of the	
2	investigation and enforcement of this case, pursuant to Business and Professions Code section	
3	125.3;	
4	3. Taking such other and further action as deemed necessary and proper.	
5	8/2/10 () \d	
6	DATED: Of Q/09 VIRGINIA HEROLD	
7	Executive Officer Board of Pharmacy	
8	Department of Consumer Affairs State of California	
9	Complainant	
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